CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1929

No. 375

WESTERN CARTRIDGE COMPANY, PETITIONER,

vs.

LOUIS L. EMMERSON, SECRETARY OF STATE OF THE STATE OF ILLINOIS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

PETITION FOR CERTIORARI FILED SEPTEMBER 5, 1929

CERTIORARI GRANTED OCTOBER 21, 1929

(34,506)

(34,506)

SUPREME COURT OF THE UNITED STATES

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[fol. 3]

IN CIRCUIT COURT OF SANGAMON COUNTY

In Chancery

BILL OF COMPLAINT—Filed Aug. 18, 1927

To the Honorable Judges of the Circuit Court of Sangamon County, in Chancery Sitting:

Your orator, Western Cartridge Company, a corporation, represents and states to your Honors:

1. Your orator is a corporation organized and doing business under the laws of the State of Delaware and is licensed to do business in the State of Illinois.

2. Your orator is a corporation with issued par value capital stock of $5,701,800, with total property wherever located valued at $6,924,804.92, of which $6,894,903.27 in value is located in Illinois. Its total business transacted everywhere in the year 1926 was $11,670,925.51. Its total business constituted of intrastate commerce transacted by it at or from places of business in Illinois in 1926 was $1,919,-882.73. Its total business constituted of interstate commerce transacted by it at or from places of business in Illinois in 1926 was $9,751,042.78; the total amount of franchise tax or license fee paid as hereinafter alleged was $2,808.03, of which $1,328.81 was solely based upon and attributable to transactions in interstate commerce as hereinafter alleged.

[fol. 4] 3. Such business of your orator transacted everywhere and such business transacted by it at or from places of business in the State of Illinois in the year 1926, consisted of sales of goods, wares and merchandise.

4. Certain of your orator's such sales were sales the contracts for which involved the transportation of such goods, wares and merchandise across state lines, and such contracts were in fact as performed and the resulting transactions were transactions in interstate commerce.

5. The provisions of Section 105 of the General Corporation Act of Illinois as amended by the Act of May 12, 1927, are as follows:

"Sec. 105. Each corporation for profit, including railroads, except insurance companies, heretofore or hereafter organized under the laws of this State or admitted to do business in this State, and required by this Act to make an annual report, shall pay an annual license fee or franchise tax to the Secretary of State of five cents on each one hundred dollars of the proportion of its issued capital stock, or amount to be issued at once, represented by business transacted and property located in this State, but in no event shall the amount of such license fee or franchise tax be less than that required by this Act of corporations having no property or business in this State.

"In the event that the corporation has stock of no par value, its shares, for the purpose of fixing such fee, shall be taken and considered at the amount of the consideration received or to be received by such corporation for such shares."

6. At the present time and for some years last past Louis L. Emmerson is and has been the duly elected and qualified Secretary of State of the State of Illinois.

[fol. 5] 7. In the month of February, 1927, your orator filed in the office of said Louis L. Emmerson, Secretary of State of the State of Illinois, its Annual Report on, and in accordance with, the form of Annual Reports prescribed by said Louis L. Emmerson, as such Secretary of State of Illinois. In said Annual Report your orator set out among other things the amount of its par value capital stock issued, the total value of all of its property, the total value of all of its property located in Illinois, its total business transacted everywhere during the year 1926, and its total business for the said year transacted by it at or from places of business in the State of Illinois; and in showing the total business transacted at or from places of business in the State of Illinois your orator showed transactions in interstate commerce and transactions in intrastate commerce separately.

8. The transactions in interstate commerce set out in its Annual Report as above stated constituted and each of

them constituted sales of goods shipped in interstate commerce from places of business in Illinois to places and purchasers in other states pursuant to contracts providing therefor and involved in every case shipments across state lines.

9. Just prior to to-wit: July 1, 1927, Louis L. Emmerson, as such Secretary of State of Illinois, the defendant herein, assessed against your orator and demanded of your orator that it pay to him solely as a franchise tax or license fee for the privilege of transacting business in Illinois from July 1, 1927, to June 30, 1928, the sum of money heretofore set forth as the franchise tax paid by it. This sum of money amounts to five cents for each one hundred dollars of the issued par value capital stock represented by the proportion of its property located and business transacted in Illinois as compared to its total business and property wherever transacted and located, as computed as hereinafter shown in Paragraph 10th.

[fol. 6] 10. The said Louis L. Emmerson, Secretary of State of Illinois, defendant herein, in computing the aforesaid sum to be paid by your orator in the manner hereinabove set forth, included and insisted upon including the interstate business transacted by your orator at or from places of business in Illinois, to places in other states, as a part of the business transacted by your orator in Illinois, and your orator alleges that the assessment and collection of the said tax resulting from the inclusion of such interstate business as business transacted in Illinois is a burden on interstate commerce and is in violation of the clause of the Constitution of the United States giving the Congress power to regulate commerce among the several states.

11. Your orator protested to said Louis L. Emmerson, Secretary of State of Illinois against the payment of so much of said amount so demanded of it as was assessed upon the basis of and solely attributable to such interstate commerce transacted at or from places of business in Illinois, and your orator protested to said Louis L. Emmerson, Secretary of State of Illinois, against the payment of any amount so assessed against it, making known to said

Louis L. Emmerson that said Section 105 of said General Corporation Act was and is invalid, and that if valid it did not and does not provide for the inclusion of interstate commerce transacted at or from places of business in Illinois in the amount of business transacted in Illinois upon which the said franchise tax or license fee is based in its assessment, but said Louis L. Emmerson totally disregarded said protest and threatened that if the full amount so assessed and demanded to be paid was not paid on or before the last day of July, 1927, he would invoke or cause to be invoked against your orator those provisions of the General [fol. 7] Corporation Act of Illinois providing that if such taxes assessed are not paid before the thirty-first day of July in the year they are assessed they shall be deemed delinquent and there shall be added thereto and collected from each corporation five per cent for each month, or part of month, that the same is delinquent, and the provisions of said Act that such amounts so assessed, together with such interest and penalties and costs shall be a prior and first lien on the real estate and personal property of the taxpayer, and the provisions of said Act for a preemptory levy upon and sale of the property of such a taxpayer, and the provisions of said Act for dissolution of any corporation so delinquent in the payment of such taxes.

12. Your orator alleges that thereupon, on to-wit: July 30, 1927, it paid said total amount of such tax so assessed against and demanded from it under protest, both as to the total amount so paid and as to such amount attributable to interstate commerce, and that your orator made such payments under the duress and compulsion arising from such threats of said Louis L. Emmerson.

13. Your orator further represents and charges that the assessment and collection of the annual license fee or franchise tax against it by the said Louis L. Emmerson, Secretary of State of Illinois, defendant herein, in the manner hereinbefore set forth; namely, by the inclusion of interstate business between points in Illinois and points in other states, as aforesaid, as business transacted in Illinois is not in accordance with the said Section 105 of the said General Corporation Act of Illinois, and is therefore illegal, invalid and without authority of law, and arises from an in-

correct and erroneous interpretation or construction of said Section 105 of said Act.

[fol. 8] 14. Your orator further represents and charges that if the said Section 105 of the said General Corporation Act of Illinois, does require the said Louis L. Emmerson, Secretary of State of Illinois, defendant herein, to compute the annual license fee or franchise tax of Corporations in the manner heretofore set forth; namely, by the inclusion of interstate business as business transacted in Illinois, the said Section is invalid, unconstitutional and void because it lays an undue burden on interstate commerce in violation of the provisions of the Constitution of the United States granting the Congress power to regulate commerce among the several states, all to the hurt and injury of your orator.

15. Your orator further represents and charges that said Section 105 of said General Corporation Act of Illinois, as amended by the Act of May 12, 1927, is invalid, unconstitutional and void in that by the Act of May 12, 1927, the General Assembly of the State of Illinois purported to amend (with other sections) Section 105 of the General Corporation Act, which said Section had been declared invalid as to foreign corporations by the Supreme Court of Illinois in the case of O'Gara Coal Company v. Emmerson, 326 Ill. 18; and that the said Section 105, as a result of this decision, was necessarily invalid and unconstitutional as to domestic corporations, and in that the purported Section 105 of the said General Corporation act of Illinois purported to be as amended by said Act of May 12, 1927, was and is an attempted or pretended amendment of an invalid section; namely, Section 105 of said General Corporation Act.

[fol. 9] 16. Your orator further charges that the said Section 105 of said General Corporation Act of Illinois, as amended as aforesaid, is invalid, unconstitutional and void in that it requires par value stock to be taxed on the basis of the par value of said stock and requires non par value stock to be taxed on the basis of the consideration received or to be received for said shares, for the reason that it discriminates unreasonably between corporations with stock issued and not fully paid for, and corporations with stock issued and fully paid for, and for the further reason that

it provides a tax for the privilege of doing business in Illinois, the measure of which has no relation to the value or extent of the privilege; and in that for these reasons it deprives your orator of property without due process of law in violation of the Constitution of the State of Illinois and of the Constitution of the United States, all to the hurt and injury of your orator.

17. Your orator further represents that if said sum is so paid over to the said Treasurer of the State of Illinois by the said Louis L. Emmerson, Secretary of State of Illinois, defendant herein, said sum will be forever and irrevocably lost to your orator, and that your orator has not, and there does not exist, any remedy at law for the recovery thereof.

Therefore your orator prays that the said Louis L. Emmerson, Secretary of State of Illinois, who is made defendant to this Bill of Complaint, may be required to answer the same, (but not under oath, his answer under oath being hereby waived); that this Court may grant a preliminary injunction prior to the hearing on this Bill, and after the hearing, a permanent injunction, enjoining and restraining said defendant from turning over to or paying to the State Treasurer of the State of Illinois, the said sum of money so paid by your orator as the amount of said franchise tax [fol. 10] paid by it to the said defendant, or from otherwise disposing of the same; or, in case the Court finds that the said defendant should not be enjoined from paying over all of said sum, that he be enjoined from paying over to the State Treasurer of Illinois, the sum representing the amount of franchise tax collected from your orator and based on interstate business, and that after the hearing a decree may be entered requiring said defendant to return to your orator said sum of money so paid to said defendant; that said defendant may also be enjoined by preliminary injunction, and after the hearing by a permanent injunction, from forfeiting, annulling, cancelling, declaring void or otherwise interfering in any way with the authority and license of your orator to do business in the State of Illinois, or from declaring your orator without authority to do business in the State of Illinois, and that your orator may have such other relief as may be deemed equitable.

May it please your Honors to grant unto your orator the People's writ of Injunction to be directed to the defendant, said Louis L. Emmerson, enjoining and restraining him and his successors as such Secretary of State, from turning over to or paying to the State Treasurer of the State of Illinois the said sum of money being the amount of said franchise tax paid by it to the said defendant, or from otherwise disposing of the same; or, in case the Court finds that the said defendant should not be enjoined from paying over all of said sum, that he be enjoined from paying over to the State Treasurer of Illinois, the sum representing the amount of franchise tax collected from your orator and based on interstate business, or from otherwise disposing of it until the further order of the Court.

May it please your Honors to grant the writ of Summons in Chancery directed to the Sheriff of said County of Sanga-
[fol. 11] mon, commanding him that he summon the defendant, Louis L. Emmerson, Secretary of State of Illinois, to appear before the said Court on the first day of the next term thereof to be held at the Court House in the City of Springfield, in the County of Sangamon aforesaid, and then and there make answer to this Bill.

And your orator will ever pray.

Fyffe & Clarke, Solicitors for said Complainant.

Duly sworn to by John M. Glenn. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 12] In Circuit Court of Sangamon County

In Chancery

Western Cartridge Co., a Corporation,

vs.

Louis L. Emmerson, Secretary of State of the State of Illinois

Order for Injunction—Filed Aug. 19, 1927

This cause coming on to be heard upon motion of solicitors for the complainant here praying for a temporary

Writ of Injunction as hereinafter set forth, the complainant being represented by Fyffe & Clarke, solicitors, and the defendant by B. L. Catron, Assistant Attorney General of the State of Illinois, the Court having read the Bill of Complaint, duly verified, and having heard the arguments of counsel, and now being fully advised in the premises does order that a temporary writ of injunction be issued restraining Louis L. Emmerson as Secretary of State of the State of Illinois, commanding him to refrain and desist from paying to the State reasurer or into the Treasury of the State of Illinois, the sum of $2,808.03 heretofore paid [fol. 13] to him by the complainant herein under protest as and for its franchise tax or license fee and alleged by said Bill of Compla-nt to have been improperly assessed against it, and improperly collected from it by said Secretary of State as alleged in said Bill of Complaint.

Enter:

Norman L. Jones, Judge.

[File endorsement omitted.]

[fol. 14] In Circuit Court of Sangamon County

Writ of Injunction—Filed Aug. 19, 1927

The People of the State of Illinois to Louis L. Emmerson, Secretary of State of the State of Illinois, Greeting:

You, the said Louis L. Emmerson, Secretary of State of the State of Illinois and each of your clerks, deputies, agents, attorneys, servants and employes, or successors in office are hereby commanded, enjoined and restrained from paying to the State Treasurer or into the Treasury of the State of Illinois, the sum of $2,808.03 heretofore paid to you by the complainant herein under protest as and for its franchise tax or license fee and alleged by said Bill of Complanit to have been improperly assessed against it, and improperly collected from it by said Secretary of State as alleged in said Bill of Complaint, and you, the said Louis L. Emmerson, Secretary of State of the State of Illinois, and each of your clerks, deputies, agents, attorneys, servants and employes, or successors in office, are commanded,

enjoined and restrained, as aforesaid until the matters and things set forth and contained in a Bill or Petition in Chancery, this day filed in the office of the Circuit Court of Sangamon County, and State of Illinois, wherein Western Cartridge Co. a Corp. is Complainant and Louis L. Emmerson, Secretary of State of the State of Illinois, Defendant can be heard and determined in equity, or until the further order of the Sangamon County Circuit Court [fol. 15] in the premises, and this order and injunction, you, the said Louis L. Emmerson, Secretary of State of the State of Illinois, and each of your clerks, deputies, agents, attorneys, servants and employes, and successors in office, are to obey, keep, observe, and abide by, and in no wise omit so doing under the pains and penalties of the law.

To the Sheriff of said County to execute and return in due form of law.

Witness R. G. Moore, Clerk of said Court, and the Judicial Seal thereof, at Springfield, this 19th day of August, A. D. 1927.

R. G. Moore, Clerk. (Official Seal.)

[File endorsement omitted.]

STATE OF ILLINOIS,
Sangamon County, ss:

I have duly served the within writ on the within named Louis L. Emmerson, Secretary of State of the State of [fol. 16] Illinois by reading the within to him and at the same time delivering to him a true copy thereof, this 19th day of August A. D. 1927.

James M. Kent, Sheriff.

Fees:

Service	$1.00
Mileage	.40
Return	.25
Total	$1.65

Pd. by Fyffe & Clark.

IN CIRCUIT COURT OF SANGAMON COUNTY

[Titles omitted]

ORDERS EXTENDING TIME

Sept. 6, 1927.

Upon motion of the defendant by his solicitor leave is given him to answer by the 26th inst.

[fol. 17] Sept. 26, 1927.

Upon motion of the defendant by his solicitor it is ordered by the Court the *the* time to answer herein be and the same is extended to October 17th.

[fol. 18] IN CIRCUIT COURT OF SANGAMON COUNTY

[Title omitted]

ANSWER—Filed Oct. 17, 1927

The answer of Louis L. Emmerson, Secretary of State of the State of Illinois, defendant, to the bill of complaint of Western Cartridge Company, complainant.

This defendant, now and at all times hereafter saving and reserving unto himself all manner of benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said bill of complaint contained, for answer thereunto says:

1. This defendant admits that the complainant is a corporation organized and doing business under the laws of the State of Delaware and is licensed to do business in the State of Illinois, with issued par value capital stock, total amount of property and property located in Illinois, and total amount of business transacted in the year 1926, as alleged in said bill of complaint, but denies that the total amount of business transacted by it in said year in Illinois in intrastate commerce and interstate commerce respectively, is correctly set forth in said bill; and this defend-
[fol. 19] ant admits that the total amount of franchise tax

paid by it for said year was $2,808.03, but denies that $1,328.81 of said amount was solely based upon or attributable transactions in interstate commerce, as alleged in said bill.

2. This defendant further answering admits that said business of the complainant during said year consisted of sales of goods, wares and merchandise, and that certain of such sales may have involved the transportation of such products across state lines and the performance of such transactions may have had some features of interstate commerce, but shows that such business was transacted principally in this State and had little or no elements of interstate commerce or business outside this State.

3. This defendant further answering admits that the provisions of Section 105 of the General Corporation Act of this State, as amended by the Act of May 12, 1927, are substantially as set forth in said bill and that this defendant is and has been for some years the duly elected and qualified Secretary of State of this State, and that in the month of February, 1927, the complainant filed in his office its annual report on forms prescribed by him, and therein set forth the amount of its par value capital stock issued, the total value of all its property and of that part thereof located in this State, the total amount of business transacted during the year 1926, and the amount thereof transacted at or from places of business in this State, but denies that in showing such business it correctly showed transactions in interstate and intrastate commerce separately, or that [fol. 20] the transactions in such alleged interstate commerce constituted sales of goods shipped in interstate commerce, although they may have involved to some extent the shipment of goods from places of business in Illinois to other states, pursuant to contracts therefor, as alleged in said bill.

4. This defendant further answering admits that prior to July 1, 1927, he assessed against the complainant and demanded that it pay as its franchise tax or license fee for the privilege of transacting business in this State from July 1, 1927, to June 30, 1928, the amount theretofore set forth as the franchise tax paid by it, being at the rate alleged on the issued capital stock represented by the pro-

portion of its property located and business transacted in this State as compared to its total business and property everywhere, and that in computing said amount he included such alleged interstate business transacted at or from places of business in Illinois as a part of the business transacted in this State, but denies that the assessment and collection of said tax is a burden upon interstate commerce or is in violation of the interstate commerce clause of the Constitution of the United States, as alleged in said Bill.

5. This defendant further answering admits that the complainant protested against the payment of so much of said amount as was assessed upon or attributable to such alleged interstate commerce and against the payment of any amount so assessed against it, contending that said Section 105 of said Act is invalid or that if valid it did not provide for the exclusion of such alleged interstate commerce, but that this defendant disregarded such protest and may have referred to the provisions of said Act, which might be invoked in case such tax was not paid pursuant thereto; [fol. 21] and this defendant admits that at about the time alleged the complainant paid the total amount of said tax so assessed against it under protest as alleged, but denies that such assessment and collection of said tax is not in accordance with said Section 105 or is invalid or incorrect, or that said Section is invalid or unconstitutional, or lays any undue burden on interstate commerce, in violation of the provisions of the Constitution of the United States; or that said Section 105, as amended by said Act of May 12, 1927, is invalid, unconstitutional or void for any of the supposed reasons alleged in said bill, or that it deprives the complainant of its property without due process of law in violation of the Constitution of this State, or of the United States, or that the complainant is entitled to the relief or any part thereof in its said bill demanded; and now having fully answered said bill, this defendant prays that he may be hence dismissed with his reasonable costs and charges in this behalf sustained.

Louis L. Emmerson, Secretary of State of the State of Illinois, by Oscar E. Carlstrom, Attorney General, Solicitor for Defendant. B. L. Catron, Assistant Attorney General, of Counsel.

[File endorsement omitted.]

[fols. 22 & 23] In Circuit Court of Sangamon County

Minute Entries

Nov. 3, 1927.

Order of Court: "It is ordered by the Court that all causes, motions, etc., not otherwise and finally disposed of, be continued to the next term of this Court."

* * * * * * *

"It is ordered that Court adjourn until Court in Course."

[fols. 24 & 25] Dec. 30, 1927.

Order of Court: "It is ordered by the Court that all causes, motions, etc., not otherwise and finally disposed of, be continued to the next term of this Court."

* * * * * * *

"It is ordered that Court adjourn until Court in Course."

[fol. 26] In Circuit Court of Sangamon County

In Chancery

[Title omitted]

Stipulation re Statement of Facts—Filed Feb. 28, 1928

It is hereby stipulated and agreed by and between the parties to the above entitled cause, by their respective solicitors, that the statement of facts made by the complainant hereto attached and verified by the affidavit of its officer having personal knowledge of such facts, or that they are so shown by the books and records of the complainant, may be taken [fol. 27] and considered as evidence of such facts presented in behalf of the complainant, in lieu of the introduction of the testimony of witnesses and documents mentioned in regard to the facts shown by such statement, for all pur-

poses for which such facts may be competent evidence under the pleadings herein.

Fyffe & Clarke, Solicitors for Complainant. Oscar L. Carlstrom, Attorney General, Solicitor for Defendant. B. L. Catron, Assistant Attorney General, of Counsel.

IN CIRCUIT COURT OF SANGAMON COUNTY

STATEMENT OF FACTS—Filed Feb. 28, 1928

The complainant in the above entitled cause states that it is engaged in the business of the manufacture and sale of small arms ammunition and brasses; that its principal office is located at East Alton, Illinois, and that such branch offices at which Illinois business is transacted are located at Springfield, Illinois; that the places of location of its factories connected with such business are at East Alton and Springfield, Illinois.

[fol. 28] That the total business of complainant in the calendar year 1926 was $11,670,925.51, and that of that total business transacted $9,751,042.78 thereof was and was transacted as follows:

Persons and corporations located in other states and countries than Illinois sent offers to purchase goods or orders for goods from their respective places of business in such other states and countries than Illinois to the complainant at its place of business at East Alton, Illinois. Such offers to purchase or orders were generally but not always in the form of Exhibit A or Exhibit B hereto attached and hereby made a part hereof, and in all cases in which such offers or orders were not in such form they were in substantially such form. All of said offers to purchase or orders provided for shipment f. o. b. one or the other of the aforesaid factories of the complainant in Illinois, and provided for shipment from one or the other of said factories of the complainant in Illinois to the purchasers respective places of business in such other states or countries. In the case of each of such offers or orders the complainant transmitted a written acceptance of the offer or order from the

EXHIBIT "A"

Western Cartridge Company

East Alton, Illinois, U. S. A.

Ammunition Order

Date.....

DISCOUNTS AND QUANTITY ON ORDER

LOADED SHELLS		CARTRIDGES	
Xpert	M	22 Shorts (Ball)	M
Super-X	M	Other Rim Fire	M
Field	M	Center Fire	M
Record	M		
New Chief	M		
Terms		Terms	

NOTE—

This order is placed at prices and terms stated herein and is subject to acceptance by the Company.

Verbal agreements between buyer and salesman will not be recognized.

In the event of the insolvency of the buyer, or sale, or transfer of the business of the buyer, this agreement may, at the option of the company, be rescinded.

All agreements are contingent upon strikes, floods, fires, accidents or other conditions beyond the control of the Company.

Ship To.....

.....

When..... Route.....

Quantity	Gauge	Shells	Drams Powder	Kind of Powder	Ounces Shot	Size of Shot		List per M	
						Drop	Chilled		

LOADED SHELLS

Xpert.....M.....

Super-X.....M.....

Field.....M.....

Record.....M.....

New Chief.....M.....

Terms.....

CARTRIDGES

22 Shorts (Ball).....M.....

Other Rim Fire.....M.....

Center Fire.....M.....

Terms.....

NOTE—

This order is placed at prices and terms stated herein and is subject to acceptance by the Company.

Verbal agreements between buyer and salesman will not be recognized.

In the event of the insolvency of the buyer, or sale, or transfer of the business of the buyer, this agreement may, at the option of the company, be rescinded.

All agreements are contingent upon strikes, floods, fires, accidents or other conditions beyond the control of the Company.

Ship To.....

.....

When..... Route.....

Quantity	Gauge	Shells	Drams Powder	Kind of Powder	Ounces Shot	Size of Shot		List per M	
						Drop	Chilled		
M								$	
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Representative..... Buyer.....

EXHIBIT "B"

WESTERN CARTRIDGE COMPANY

EAST ALTON, ILLINOIS

(B)

No._____ Date_____

Ship to_____

Town_____ State_____ When_____

Route_____ Terms:_____

NOTE:—This order is placed at prices and terms stated herein and is subject to acceptance by the Company. Verbal agreements between buyer and salesman will not be recognized. In the event of the insolvency of the buyer, or sale, or transfer of the business of the buyer, this agreement may, at the option of the company, be rescinded. All agreements are contingent upon strikes, floods, fires, accidents or other conditions beyond the control of the company.

QUANTITY	GAUGE	SHELL, POWDER AND SPECIFICATION	PRICE	
M				
M				
M				
M				
M				
M				
M				
M				
M				
M				
M				
M				
M				

For Shipment Through_____ Jobber

SALESMAN BUYER

PRICES AND TERMS ACCEPTED

EXHIBIT "C"

AMERICAN RAILWAY EXPRESS CO. TRIPLICATE NOT NEGOTIABLE

AT EAST ALTON, ILL., _____ 192__ From **Western Cartridge Co.**

The following described articles to be forwarded to consignee and destination as given below, subject to the terms and conditions of the Uniform Express Receipt prescribed by the Interstate Commerce Commission, and in effect on the date of shipment

~~06630~~ 03048

CONSIGNED TO _____

STREET ADDRESS _____

DESTINATION _____ STATE _____ COUNTY _____

No. Packages	DESCRIPTION OF ARTICLES, SPECIAL MARKS AND EXCEPTIONS	*WEIGHT (Sub. to Cor.)
	Cases Small Arms Ammunition (Loaded Paper Shells)	
	" " " " (Metallic Loaded Cartridges)	
	" " " Primers	
	" Shot	
	Barrels Clay Targets	
	Cases Target Traps	
	" Trap Repairs	
	" Sheet Brass, Not Perforated	
	" " Bronze " "	
	" " Nickel Silver, Not Perforated	
	" Brass Ferrules	
	" " Blanks, Unfinished Shapes, N. O. I. B. N.	
	" " Articles, N. O. I. B. N.	
	" Screw Shells (For Lamp Sockets)	
	" Lawn Sprinklers	
	Packages Advertising Matter (Described)	
	Cases	

PREPAID	COLLECT	C. O. D.	CHARGES	
		$ _____	Amt. $ _____	Value herein declared by shipper to be _____

WESTERN CARTRIDGE CO., Shipper

Per _____

For the Express Co.

290964 BUSINESS CARGO SYSTEMS, CHICAGO

AMERICAN RAILWAY EXPRESS CO.

QUADRUPLICATE
–NOT NEGOTIABLE

AT EAST ALTON, ILL., _____ 192__

From **Western Cartridge Co.**

The following described articles to be forwarded to consignee and destination as given below, subject to the terms and conditions of the Uniform Express Receipt prescribed by the Interstate Commerce Commission, and in effect on the date of shipment.

06630

CONSIGNED TO _____

STREET ADDRESS _____

DESTINATION _____ STATE _____ COUNTY _____

No. Packages	DESCRIPTION OF ARTICLES, SPECIAL MARKS AND EXCEPTIONS	*WEIGHT (Sub. to Cor.)
	Cases Small Arms Ammunition (Loaded Paper Shells)	
	" " " " (Metallic Loaded Cartridges)	
	" " " Primers	
	" Shot	
	Barrels Clay Targets	
	Cases Target Traps	
	" Trap Repairs	
	" Sheet Brass, Not Perforated	
	" " Bronze " "	
	" " Nickel Silver, Not Perforated	
	" Brass Ferrules	
	" " Blanks, Unfinished Shapes, N. O. I. B. N.	
	" " Articles, N. O. I. B. N.	
	" Screw Shells (For Lamp Sockets)	
	" Lawn Sprinklers	
	Packages Advertising Matter (Described)	
	Cases	

PREPAID	COLLECT	C. O. D.	CHARGES	
		$ _____	Amt. $_____	Value herein declared by shipper to be_____

WESTERN CARTRIDGE CO., Shipper

Per_____

For the Express Co.

290964 BUSINESS UARCO SYSTEMS, CHICAGO

32-A

EXHIBIT "D"

(For use in connection with Uniform Domestic Straight Bill of Lading adopted by Carriers in Official, Southern and Western Classification territories, March 15, 1922.) (Prescribed by the Interstate Commerce Commission.)

THIS MEMORANDUM is an acknowledgment that a bill of lading has been issued and is not the Original Bill of Lading, nor a copy or duplicate, covering the property named therein, and is intended solely for filing or record. RECEIVED, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described in the Original Bill of Lading.

At East Alton, Ill., _____ 192__ FROM **WESTERN CARTRIDGE CO.**

_____ Company Agent's No. _____ Shipper's No. 08975

The property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

(Mail or street address of consignee—For purpose of notification only.)

Consigned to _____

Destination _____ State of _____ County of _____

Route _____ Car Initial _____ Car No. _____

No. Packages	DESCRIPTION OF ARTICLES, SPECIAL MARKS AND EXCEPTIONS	*Weight (Sub. to Cor.)	Class or Rate	Ck. Col.
	Cases Small Arms Ammunition (Loaded Paper Shells)			
	" " " " (Metallic Loaded Cartridges)			
	" " " Primers			
	" Shot			
	Gunnies (Bags) Shot			
	Barrels Clay Targets			
	Cases Target Traps			
	" Sheet Brass, Not Perforated .005" and thicker			
	" Sheet Bronze, Not Perforated .005" and thicker			
	" Sheet Nickel, (German) Silver Not Perforated .005" and thicker			
	" Sheet Brass, Perforated .005" and thicker			
	" Brass Ferrules			
	" Brass Blanks (Unfinished Shapes)			
	" Screw Shells (for Lamp Sockets)			
	" Lawn Sprinklers			
	" Brass Articles (N. O. S.)			
	Cases			
	Barrels			

If this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges. (See section 7 of conditions.)

WESTERN CARTRIDGE CO.

Per _____

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Received $ _____ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier.

Per _____

(The signature here acknowledges only the amount prepaid.)

Charges Advanced: $ _____

3

East Alton, Ill. 19__ FROM WESTERN CARTRIDGE CO.

_____ Company Agent's No. _____ Shipper's No. 08975

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

(Mail or street address of consignee—For purposes of notification only.)

Consigned to _____

Destination _____ State of _____ County of _____

Route _____ Car Initial _____ Car No. _____

No. Packages	DESCRIPTION OF ARTICLES, SPECIAL MARKS AND EXCEPTIONS	*Weight (Subj. to Cor.)	Class or Rate	Ck. Col.
	Cases Small Arms Ammunition (Loaded Paper Shells)			
	" " " " (Metallic Loaded Cartridges)			
	" " " Primers			
	" Shot			
	Gunnies (Bags) Shot			
	Barrels Clay Targets			
	Cases Target Traps			
	" Sheet Brass, Not Perforated .005" and thicker			
	" Sheet Bronze, Not Perforated .005" and thicker			
	" Sheet Nickel, (German) Silver Not Perforated .005" and thicker			
	" Sheet Brass, Perforated .005" and thicker			
	" Brass Ferrules			
	" Brass Blanks (Unfinished Shapes)			
	" Screw Shells (for Lamp Sockets)			
	" Lawn Sprinklers			
	" Brass Articles (N. O. S.)			
	Cases			
	Barrels			

If this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges. (See section 7 of conditions.)

WESTERN CARTRIDGE CO.

Per _____

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Received $ _____ to apply in prepayment of the charges on the property described herein.

Agent or Cashier.

Per _____

(The signature here acknowledges only the amount prepaid.)

Charges Advanced: $ _____

3

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."
NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding _____ per _____

This is to certify that the above articles are properly described by name and are packed and marked and are in proper condition for transportation according to the regulations prescribed by the Interstate Commerce Commission.

Shipper's imprint in lieu of stamp; not a part of Bill of Lading approved by the Interstate Commerce Commission.

WESTERN CARTRIDGE CO., Shipper, Per _____ Agent _____ Per _____

Permanent Post-Office Address of Shipper: EAST ALTON, ILL.

274349 UNITED BUSINESS SYSTEMS, CHICAGO

CONTRACT TERMS AND CONDITIONS

Sec. 1. (a) The carrier or party in possession of any of the property herein described shall be liable as at common law for any loss thereof or damage thereto except as hereinafter provided.

(b) No carrier or party in possession of all or any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, the authority of law, or the act or default of the shipper or owner, or for natural shrinkage. The carrier's liability shall be that of warehouseman, only, for loss, damage, or delay caused by fire occurring after the expiration of the free time allowed by tariffs lawfully on file (such free time to be computed as therein provided) after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination, or tender of delivery of the property to the party entitled to receive it, has been made. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall lie on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon the request of the shipper, owner, or party, entitled to make such request, or resulting from a defect or vice in the property, or for country damage to cotton, or from riots or civil or military authorities, or for the carrier's dispatch or want of dispatch in procuring perishable property.

(c) In case of quarantine the property may be discharged at risk and expense of owners into quarantine depot or elsewhere, as required by quarantine regulations or authorities, or for the carrier's dispatch at nearest available point in carrier's judgment, and in any such case carrier's responsibility shall cease when property is so discharged, or property may be returned by carrier at owner's expense to shipping point, earning freight both ways. Quarantine expenses of whatever nature or kind upon or in respect to property shall be borne by the owners of the property or be a lien thereon. The carrier shall not be liable for loss or damage occasioned by fumigation or disinfection or other acts required or done by quarantine regulations or authorities even though the same may have been done by carrier's officers, agents, or employees, nor for detention, loss, or damage of any kind occasioned by quarantine or the enforcement thereof. No carrier shall be liable, except in case of negligence, for any mistake or inaccuracy in any information furnished by the carrier, its agents, or officers, as to quarantine laws or regulations. The shipper shall hold the carriers harmless from any expense they may incur, or damages they may be required to pay, by reason of the introduction of the property covered by this contract into any place against the quarantine laws or regulations in effect at such place.

Sec. 2. (a) No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch. Every carrier shall have the right in case of physical necessity to forward said property by any carrier or route between the point of shipment and the point of destination. In all cases not prohibited by law, where a lower value than actual value has been represented in writing by the shipper or has been agreed upon in writing as the released value of the property as determined by the classification or tariffs upon which the rate is based, such lower value plus freight charges if paid shall be the maximum amount to be recovered, whether or not such loss or damage occurs from negligence.

(b) Claims for loss, damage, or injury to property must be made in writing to the originating or delivering carrier or carriers issuing this bill of lading within six months after delivery of the property (or, in case of export traffic, within nine months after delivery at port of export) or, in case of failure to make delivery, then within six months (or nine months in case of export traffic) after a reasonable time for delivery has elapsed; provided that if such loss, damage, or injury was due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, then no notice of claim nor filing of claim shall be required as a condition precedent to recovery. Suits for loss, damage, injury, or delay shall be instituted only within two years and one day after delivery of the property, or in case of failure to make delivery, then within two years and one day after a reasonable time for delivery has elapsed: Provided, That in case the claim on which suit is based was made in writing within six months, or nine months in case of export traffic (whether or not filing of such claim is required as a condition precedent to recovery), suit shall be instituted not later than two years and one day after notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice.

(c) Any carrier or party liable on account of loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance: Provided, That the carrier reimburse the claimant for the premium paid thereon.

Sec. 3. Except where such service is required as the result of carrier's negligence, all property shall be subject to necessary cooperage and baling at owner's cost. Each carrier over whose route cotton or cotton linters is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public or licensed elevator, may (unless otherwise expressly noted herein, and then if it is not promptly so unloaded) be there delivered and placed with other grain of the same kind and grade without respect to ownership (and prompt notice thereof shall be given to the consignor), and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

Sec. 4. (a) Property not removed by the party entitled to receive it within the free time allowed by tariffs, lawfully on file (such free time to be computed as therein provided), after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination has been made, may be kept in vessel, car, depot, warehouse or place of delivery of the carrier, subject to the tariff charge for storage and to carrier's responsibility as warehouseman, only, or at the option of the carrier, may be removed to and stored in a public or licensed warehouse at the place of delivery or other available place, at the cost of the owner, and there held without liability on the part of the carrier and subject to lien for all freight and other lawful charges, including a reasonable charge for storage.

(b) Where nonperishable property which has been transported to destination hereunder is refused by consignee or the party entitled to receive it, or said consignee or party entitled to receive it fails to receive it within 15 days after notice of arrival shall have been duly sent or given, the carrier may sell the same at public auction to the highest bidder, at such place as may be designated by the carrier: Provided, That the carrier shall have first mailed, postage prepaid, to the consignee notice that the property has been refused or remains unclaimed, as the case may be, and that it will be subject to sale under the terms of the bill of lading if disposition be not arranged for, and shall have published notice containing a description of the property, the name of the party to whom consigned, or, if shipped order notify, the name of the party to be notified, and the time and place of sale, once a week for two successive weeks, in a newspaper of general circulation at the place of sale or nearest place where such newspaper is published: Provided, That 30 days shall have elapsed before publication of notice of sale after said notice that the property was refused or remains unclaimed was mailed, sent, or given.

(c) Where perishable property which has been transported hereunder to destination is refused by consignee or party entitled to receive it, or said consignee or party entitled to receive it shall fail to receive it promptly, the carrier may, in its discretion, to prevent deterioration or further deterioration, sell the same to the best advantage at private or public sale: Provided, That if time serves for notification to the consignor or owner of the refusal of the property or the failure to receive it and request for disposition of the property, such notification shall be given, in such manner as the exercise of due diligence requires, before the property is sold.

(d) Where the procedure provided for in the two paragraphs last preceding is not possible, it is agreed that nothing contained in said paragraphs shall be construed to abridge the right of the carrier at its option to sell the property under such circumstances and in such manner as may be authorized by law.

(e) The proceeds of any sale made under this section shall be applied by the carrier to the payment of freight, demurrage, storage, and any other lawful charges and the expense of notice, advertisement, sale, and other necessary expense and of caring for and maintaining the property, if proper care of the same requires special expense, and should there be a balance it shall be paid to the owner of the property sold hereunder.

(f) Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed freight agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and, except in case of carrier's negligence, when received from or delivered to such stations, wharves, or landings shall be at owner's risk until the cars are attached to and after they are detached from locomotive or train or until loaded into and after unloaded from vessels.

Sec. 5. No carrier hereunder will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classifications or tariffs unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

Sec. 6. Every party, whether principal or agent, shipping explosives or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for and indemnify the carrier against all loss or damage caused by such goods, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

Sec. 7. The owner or consignee shall pay the freight and average, if any, and all other lawful charges accruing on said property; but, except in those instances where it may lawfully be authorized to do so, no carrier by railroad shall deliver or relinquish possession at destination of the property covered by this bill of lading until all tariff rates and charges thereon have been paid. The consignor shall be liable for the freight and all other lawful charges, except that if the consignor stipulates, by signature, in the space provided for that purpose on the face of this bill of lading that the carrier shall not make delivery without requiring payment of such charges and the carrier, contrary to such stipulation, shall make delivery without requiring such payment, the consignee shall not be liable for such charges. Nothing herein shall limit the right of the carrier to require at time of shipment the prepayment or guarantee of the charges. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

Sec. 8. If this bill of lading is issued on the order of the shipper, or his agent, in exchange or in substitution for another bill of lading, the shipper's signature to the prior bill of lading as to the statement of value or otherwise, or election of common law or bill of lading liability, in or in connection with such prior bill of lading, shall be considered a part of this bill of lading as fully as if the same were written or made in or in connection with this bill of lading.

Sec. 9. (a) If all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to all the terms and provisions of, and all the exemptions from liability contained in, the Act of the Congress of the United States, approved on February 13, 1893, and entitled "An act relating to the navigation of vessels, etc.," and of other statutes of the United States according carriers by water the protection of limited liability, and to the conditions contained in this bill of lading not inconsistent therewith or with this section.

(b) No such carrier by water shall be liable for any loss or damage resulting from any fire happening to or on board the vessel, or from explosion, bursting of boilers or breakage of shafts, unless caused by the design or neglect of such carrier.

(c) If the owner shall have exercised due diligence in making the vessel in all respects seaworthy and properly manned, equipped, and supplied, no such carrier shall be liable for any loss or damage resulting from the perils of the lakes, seas, or other waters, or from latent defects in hull, machinery, or appurtenances whether existing prior to, at the time of, or after sailing, or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And, when for any reason it is necessary, any vessel carrying any or all of the property herein described shall be at liberty to call at any port or ports, in or out of the customary route, to tow and be towed, to transfer, trans-ship, or lighter, to load and discharge goods at any time, to assist vessels in distress, to deviate for the purpose of saving life or property, and for docking and repairs. Except in case of negligence such carrier shall not be responsible for any loss or damage to property if it be necessary or is usual to carry the same upon deck.

(d) General average shall be payable according to York-Antwerp Rules, 1890, and, as to any matter not therein provided for, according to the law and usage of the port of New York. If the owners shall have exercised due diligence to make the vessel in all respects seaworthy and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster resulting from faults or errors in navigation, or in the management of the vessel, or from any latent or other defects in the vessel, her machinery or appurtenances, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage (provided the latent or other defects or the unseaworthiness was not discoverable by the exercise of due diligence), the shippers, consignees and / or owners of the cargo shall nevertheless pay salvage and any special charges incurred in respect of the cargo, and shall contribute with the shipowner in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred for the common benefit or to relieve the adventure from any common peril.

(e) If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the tariff provisions, which shall be regarded as incorporated into the conditions of this bill of lading.

(f) The term "water carriage" in this section shall not be construed as including lighterage in or across rivers, harbors, or lakes, when performed by or on behalf of rail carriers.

Sec. 10. Any alteration, addition, or erasure in this bill of lading which shall be made without the special notation hereon of the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

(For use in connection with Uniform Domestic Straight Bill of Lading adopted by Carriers in Official, Southern and Western Classification territories, March 15, 1922.) (Prescribed by the Interstate Commerce Commission.)

THIS MEMORANDUM is an acknowledgment that a bill of lading has been issued and is not the Original Bill of Lading, nor a copy or duplicate, covering the property named therein, and is intended solely for filing or record. RECEIVED, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described in the Original Bill of Lading.

At East Alton, Ill., _____ 192__ FROM **WESTERN CARTRIDGE CO.**

_____ Company Agent's No. _____ Shipper's No. 08975

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

(Mail or street address of consignee—For purposes of notification only.)

Consigned to _____

Destination _____ State of _____ County of _____

Route _____ Car Initial _____ Car No. _____

No. Packages	DESCRIPTION OF ARTICLES, SPECIAL MARKS AND EXCEPTIONS	*Weight (Subj. to Cor.)	Class or Rate	Ck. Col.
	Cases Small Arms Ammunition (Loaded Paper Shells)			
	" " " " (Metallic Loaded Cartridges)			
	" " " Primers			
	" Shot			
	Gunnies (Bags) Shot			
	Barrels Clay Targets			
	Cases Target Traps			
	" Sheet Brass, Not Perforated .005" and thicker			
	" Sheet Bronze, Not Perforated .005" and thicker			
	" Sheet Nickel, (German) Silver Not Perforated .005" and thicker			
	" Sheet Brass, Perforated .005" and thicker			
	" Brass Ferrules			
	" Brass Blanks (Unfinished Shapes)			
	" Screw Shells (for Lamp Sockets)			
	" Lawn Sprinklers			
	" Brass Articles (N. O. S.)			
	Cases			
	Barrels			

If this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges. (See section 7 of conditions.)

WESTERN CARTRIDGE CO.

Per _____

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Received $ _____ to apply in prepayment of the charges on the property described hereon.

_____ Agent or Cashier.

Per _____

(The signature here acknowledges only the amount prepaid.)

Charges Advanced $ _____

4

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."
NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding _____ per _____

This is to certify that the above articles are properly described by name and are packed and marked and are in proper condition for transportation according to the regulations prescribed by the Interstate Commerce Commission.

Shipper's imprint in lieu of stamp; not a part of Bill of Lading approved by the Interstate Commerce Commission.

WESTERN CARTRIDGE CO., Shipper, Per _____ Agent _____ Per _____

Permanent Post-Office Address of Shipper: EAST ALTON, ILL.

274349 UNITED BANKNOTE PRINTING COMPANY

33-B

CONTRACT TERMS AND CONDITIONS

Sec. 1. (a) The carrier or party in possession of any of the property herein described shall be liable as at common law for any loss thereof or damage thereto except as hereinafter provided.

(b) No carrier or party in possession of all or any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, the authority of law, or the act or default of the shipper or owner, or for natural shrinkage. The carrier's liability shall be that of warehouseman, only, for loss, damage, or delay caused by fire occurring after the expiration of the free time allowed by tariffs lawfully on file (such free time to be computed as therein provided) after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination, or tender of delivery of the property to the party entitled to receive it, has been made. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession) the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon the request of the shipper, owner, or party, entitled to make such request, or resulting from a defect or vice in the property, or for country damage to cotton, or from riots or strikes.

(c) In case of quarantine the property may be discharged at risk and expense of owners into quarantine depot or elsewhere, as required by quarantine regulations or authorities, or for the carrier's dispatch at nearest available point in carrier's judgment, and in any such case carrier's responsibility shall cease when property is so discharged, or property may be returned by carrier at owner's expense to shipping point, earning freight both ways. Quarantine expenses of whatever nature or kind upon or in respect to property shall be borne by the owners of the property or be a lien thereon. The carrier shall not be liable for loss or damage occasioned by fumigation or disinfection or other acts required or done by quarantine regulations or authorities even though the same may have been done by carrier's officers, agents, or employees, nor for detention, loss, or damage of any kind occasioned by quarantine or the enforcement thereof. No carrier shall be liable, except in case of negligence, for any mistake or inaccuracy in any information furnished by the carrier, its agents, or officers, as to quarantine laws or regulations. The shipper shall hold the carriers harmless from any expense they may incur, or damages they may be required to pay, by reason of the introduction of the property covered by this contract into any place against the quarantine laws or regulations in effect at such place.

Sec. 2. (a) No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch. Every carrier shall have the right in case of physical necessity to forward said property by any carrier or route between the point of shipment and the point of destination. In all cases not prohibited by law, where a lower value than actual value has been represented in writing by the shipper or has been agreed upon in writing as the released value of the property as determined by the classification or tariffs upon which the rate is based, such lower value plus freight charges if paid shall be the maximum amount to be recovered, whether or not such loss or damage occurs from negligence.

(b) Claims for loss, damage, or injury to property must be made in writing to the originating or delivering carrier or carriers issuing this bill of lading within six months after delivery of the property (or, in case of export traffic, within nine months after delivery at port of export) or, in case of failure to make delivery, then within six months (or nine months in case of export traffic) after a reasonable time for delivery has elapsed; provided that if such loss, damage, or injury was due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, then no notice of claim nor filing of claim shall be required as a condition precedent to recovery. Suits for loss, damage, injury, or delay shall be instituted only within two years and one day after delivery of the property, or in case of failure to make delivery, then within two years and one day after a reasonable time for delivery has elapsed; Provided, That in case the claim on which suit is based was made in writing within six months, or nine months in case of export traffic (whether or not filing of such claim is required as a condition precedent to recovery), suit shall be instituted not later than two years and one day after notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice.

(c) Any carrier or party liable on account of loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance: Provided, That the carrier reimburses the claimant for the premium paid thereon.

Sec. 3. Except where such service is required as the result of carrier's negligence, all property shall be subject to necessary cooperage and baling at owner's cost. Each carrier over whose route cotton or cotton linters is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public or licensed elevator, may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered and placed with other grain of the same kind and grade without respect to ownership (and prompt notice thereof shall be given to the consignor), and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

Sec. 4. (a) Property not removed by the party entitled to receive it within the free time allowed by tariffs, lawfully on file (such free time to be computed as therein provided), after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination has been made, may be kept in vessel, car, depot, warehouse or place of delivery of the carrier, subject to the tariff charge for storage and to carrier's responsibility as warehouseman, only, or at the option of the carrier, may be removed to and stored in a public or licensed warehouse at the place of delivery or other available place, at the cost of the owner, and there held without liability on the part of the carrier and subject to lien for all freight and other lawful charges, including a reasonable charge for storage.

(b) Where nonperishable property which has been transported to destination hereunder is refused by consignee or the party entitled to receive it, or said consignee or party entitled to receive it fails to receive it within 15 days after notice of arrival shall have been duly sent or given, the carrier may sell the same at public auction to the highest bidder, at such place as may be designated by the carrier: Provided, That the carrier shall have first mailed, sent, or given to the consignor notice that the property has been refused or remains unclaimed, as the case may be, and that it will be subject to sale under the terms of the bill of lading if disposition be not arranged for, and shall have published notice containing a description of the property, the name of the party to whom consigned, or, if shipped order notify, the name of the party to be notified, and the time and place of sale, once a week for two successive weeks, in a newspaper of general circulation at the place of sale or nearest place where such newspaper is published: Provided, That 30 days shall have elapsed before publication of notice of sale after said notice that the property was refused or remains unclaimed was mailed, sent, or given.

(c) Where perishable property which has been transported hereunder to destination is refused by consignee or party entitled to receive it, or said consignee or party entitled to receive it shall fail to receive it promptly, the carrier may, in its discretion, to prevent deterioration or further deterioration, sell the same to the best advantage at private or public sale: Provided, That if time serves for notification to the consignor or owner of the refusal of the property or the failure to receive it and request for disposition of the property, such notification shall be given, in such manner as the exercise of due diligence requires, before the property is sold.

(d) Where the procedure provided for in the two paragraphs last preceding is not possible, it is agreed that nothing contained in said paragraphs shall be construed to abridge the right of the carrier at its option to sell the property under such circumstances and in such manner as may be authorized by law.

(e) The proceeds of any sale made under this section shall be applied by the carrier to the payment of freight, demurrage, storage, and any other lawful charges and the expense of notice, advertisement, sale, and other necessary expense and of caring for and maintaining the property, if proper care of the same requires special expense, and should there be a balance it shall be paid to the owner of the property sold hereunder.

(f) Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed freight agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and, except in case of carrier's negligence, when received from or delivered to such stations, wharves, or landings shall be at owner's risk until the cars are attached to and after they are detached from locomotive or train or until loaded into and after unloaded from vessels.

Sec. 5. No carrier hereunder will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classifications or tariffs unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

Sec. 6. Every party, whether principal or agent, shipping explosives or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for and indemnify the carrier against all loss or damage caused by such goods, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

Sec. 7. The owner or consignee shall pay the freight and average, if any, and all other lawful charges accruing on said property; but, except in those instances where it may lawfully be authorized to do so, no carrier by railroad shall deliver or relinquish possession at destination of the property covered by this bill of lading until all tariff rates and charges thereon have been paid. The consignor shall be liable for the freight and all other lawful charges, except that if the consignor stipulates, by signature, in the space provided for that purpose on the face of this bill of lading that the carrier shall not make delivery without requiring payment of such charges and the carrier, contrary to such stipulation, shall make delivery without requiring such payment, the consignor shall not be liable for such charges. Nothing herein shall limit the right of the carrier to require at time of shipment the prepayment or guarantee of the charges. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

Sec. 8. If this bill of lading is issued on the order of the shipper, or his agent, in exchange or in substitution for another bill of lading, the shipper's signature to the prior bill of lading as to the statement of value or other wise, or election of common law or bill of lading liability, in or in connection with such prior bill of lading, shall be considered a part of this bill of lading as fully as if the same were written or made in or in connection with this bill of lading.

Sec. 9. (a) If all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to all the terms and provisions of, and all the exemptions from liability contained in, the Act of the Congress of the United States, approved on February 13, 1893, and entitled "An act relating to the navigation of vessels, etc.," and of other statutes of the United States according carriers by water the protection of limited liability, and to the conditions contained in this bill of lading not inconsistent therewith or with this section.

(b) No such carrier by water shall be liable for any loss or damage resulting from any fire happening to or on board the vessel, or from explosion, bursting of boilers or breakage of shafts, unless caused by the design or neglect of such carrier.

(c) If the owner shall have exercised due diligence in making the vessel in all respects seaworthy and properly manned, equipped, and supplied, no such carrier shall be liable for any loss or damage resulting from the perils of the lakes, seas, or other waters, or from latent defects in hull, machinery, or appurtenances whether existing prior to, at the time of, or after sailing, or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And, when for any reason it is necessary, any vessel carrying any or all of the property herein described shall be at liberty to call at any port or ports, in or out of the customary route, to tow and be towed, to transfer trans-ship, or lighter, to load and discharge goods at any time, to assist vessels in distress, to deviate for the purpose of saving life or property, and for docking and repairs. Except in case of negligence such carrier shall not be responsible for any loss or damage to property if it be necessary or is usual to carry the same upon deck.

(d) General average shall be payable according to York-Antwerp Rules, 1890, and, as to any matter not therein provided for, according to the law and usage of the port of New York. If the owners shall have exercised due diligence to make the vessel in all respects seaworthy and properly manned, equipped, and supplied, it is hereby agreed that in case of danger, damage or disaster resulting from faults or errors in navigation, or in the management of the vessel, or from any latent or other defects in the vessel, her machinery or appurtenances, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage (provided the latent or other defects or the unseaworthiness was not discoverable by the exercise of due diligence), the shippers, consignees and / or owners of the cargo shall nevertheless pay salvage and any special charges incurred in respect of the cargo, and shall contribute with the shipowner in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred for the common benefit or to relieve the adventure from any common peril.

(e) If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the tariff provisions, whose shall be regarded as incorporated into the conditions of this bill of lading.

(f) The term "water carriage" in this section shall not be construed as including lighterage in or across rivers, harbors, or lakes, when performed by or on behalf of rail carriers.

Sec. 10. Any alteration, addition, or erasure in this bill of lading which shall be made without the special notation hereon of the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

complainant's place of business in Illinois to the purchaser's place of business in such other state or country. In the case of each such offer or order, and in the performance of such contract so made, the complainant delivered the goods packed and marked with the purchaser's address to a common carrier at one or the other of the complainant's places of business in Illinois, and entered into a contract with the carrier evidenced by a bill of lading or shipping receipt (in the forms hereto attached and hereby made a part hereof, marked Exhibit C and Exhibit D) by which [fol. 29] the common carrier agreed to deliver the goods at the address of the purchaser in such other state or country than Illinois. In the case of each such offer or order this was done pursuant to and in fulfillment of such provisions of said contract between the complainant and the purchaser. In pursuance of the agreement between the complainant and the common carrier the goods were then transported across the state lines of the State of Illinois and into another or other state or country and delivered by the carrier to the purchaser in such states and countries other than Illinois.

Western Cartridge Company, By J. L. Donnelly, Secretary.

Duly sworn to by J. L. Donnelly. Jurat omitted in printing.

[File endorsement omitted.]

(Here follow Exhibits A, B, C, and D, side folios 30, 31, 32, 32a, 33, 33a, 33b and 33c)

[fols. 34 & 35] IN CIRCUIT COURT OF SANGAMON COUNTY

MINUTE ENTRIES

Mar. 1, 1928.

Order of Court: "It is ordered by the Court that all causes motions, etc., not otherwise and finally disposed of, be continued to the next term of this Court."

* * * * * * *

"It is ordered that Court adjourn until Court in Course."

[fols. 36 & 37] April 26, 1928.

Order of Court: "It is ordered by the Court that all causes, motions, etc., not otherwise and finally disposed of, be continued to the next term of this Court."

* * * * * * *

"It is ordered that Court adjourn until Court in Course."

[fol. 38] Minute entry of argument and submission June 9, 1928, omitted in printing.

[fol. 39] In Circuit Court of Sanamon County

Gen. No. 48183

Western Cartridge Company, a Corporation, Complainant,

vs.

Louis L. Emmerson, as Secretary of State of the State of Illinois, Defendant

Bill for Injunction

Decree—Filed June 28, 1928

Now on this day comes the complainant, Western Cartridge Company, a Corporation, by Fyffe & Clarke, its solicitors, and the defendant, Louis L. Emmersan, as Secretary of State of the State of Illinois, by the Attorney General of said State, his solicitor, and this cause having come on to be heard upon the bill of complaint herein and the answer of the defendant thereto and the statement of facts made by the complainant, to be taken and considered as evidence herein, pursuant to the stipulation between the said parties filed herein, and the Court having heard the arguments of the respective solicitors thereon, and being now fully advised in the premises, upon consideration [fol. 40] thereof, finds that the equities of this cause are with the defendant, and that the temporary injunction hereto-

fore entered herein should be dissolved, and that the bill of complaint herein should be dismissed for want of equity.

The Court doth therefore order, adjudge and decree that the temporary injunction heretofore issued herein be and the same is hereby set aside and dissolved, and that the bill of complaint be and the same is hereby dismissed for want of equity, and that the defendant recover his costs expended herein and that execution issue therefor.

To which order and ruling of the Court, the complainant, by its solicitors duly excepts and from which the complainant prays an appeal herein to the Supreme Court of the State of Illinois, which is hereby granted upon condition that the complainant file its appeal bond herein in the sum of Three Hundred Dollars ($300.00), with surety to be approved by the Clerk of this Court within thirty days from this date and its bill of exceptions or certificate of evidence within sixty days from this date; and it is further ordered that the temporary injunction heretofore entered herein be continued in force pending the appeal of this cause, as aforesaid.

Enter:

Chas. G. Briggle, Judge.

[File endorsement omitted.]

[fols. 41 & 42] Bond on appeal for $300.00, approved and filed July 25, 1928, omitted in printing.

[fol. 43] In Circuit Court of Sangamon County

[Title omitted]

Præcipe for Transcript of Record—Filed Aug. 6, 1928

To Hon. R. G. Moore, Clerk of Circuit Court of Sangamon County:

Will you please prepare a transcript of the whole record in the above entitled cause.

Fyffe & Clarke, Solicitors for Complainant.

[File endorsement omitted.]

[fol. 44] In Circuit Court of Sangamon County

In Chancery

[Title omitted]

Certificate of Evidence and Order Settling Same—Filed Aug. 3, 1928

Be it remembered and certified, that on the hearing of this cause on the 9th day of June, A. D. 1928, upon the Bill of Complaint, answer to said bill, and the stipulation of the parties, the complainant introduced the following stipulation of the parties and statement of facts; to-wit:

[File endorsement omitted]

[fol. 45] [Title omitted]

Stipulation of Parties

It is hereby stipulated and agreed by and between the parties to the above entitled cause, by their respective solicitors, that the statement of facts made by the complainant hereto attached and verified by the affidavit of its officer having personal knowledge of such facts, or that they are so shown by the books and records of the complainant, may be taken and considered as evidence of such facts presented in behalf of the complainant, in lieu of the introduction of the testimony of witnesses and documents mentioned in regard to the facts shown by such statement, for all purposes for which such facts may be competent evidence under the pleadings herein.

Fyffe & Clarke, Solicitors for Complainant. Oscar L. Carlstrom, Attorney General, Solicitor for Defendant. B. L. Catron, Assistant Attorney General, of Counsel.

[fol. 46] Statement of Facts

The complainant in the above entitled cause states that it is engaged in the business of the manufacture and sale of small arms ammunition and brasses; that its principal

office is located at East Alton, Illinois, and that such branch offices at which Illinois business is transacted are located at Springfield, Illinois; that the places of location of its factories connected with such business are at East Alton and Springfield, Illinois.

That the total business of complainant in the calendar year 1926 was $11,670,925.51, and that of that total business transacted $9,751,042.78 thereof was and was transacted as follows:

Persons and corporations located in other states and countries than Illinois sent offers to purchase goods or orders for goods from their respective places of business in such other states and countries than Illinois to the complainant at its place of business at East Alton, Illinois. Such offers to purchase or orders were generally but not always in the form of Exhibit A or Exhibit B hereto attached and hereby made a part hereof, and in all cases in which such offers or orders were not in such form they were in substantially such form. All of said offers to purchase or orders provided for shipment f. o. b. one or the other of the aforesaid factories of the complainant in Illinois, and provided for shipment from one or the other of said factories of the complainant in Illinois to the purchasers respective places of business in such other states or countries. In the case [fols. 47 & 48] of each of such offers or orders the complainant transmitted a written acceptance of the offer or order from the complainant's place of business in Illinois to the purchaser's place of business in such other state or country. In the case of each such offer or order, and in the performance of such contract so made, the complainant delivered the goods packed and marked with the purchaser's address to a common carrier at one or the other of the complainant's places of business in Illinois, and entered into a contract with the carrier evidenced by a bill of lading or shipping receipt (in the forms hereto attached and hereby made a part hereof marked Exhibit C and Exhibit D) by which the common carrier agreed to deliver the goods at the address of the purchaser in such other state or country than Illinois. In the case of each such offer or order this was done pursuant to and in fulfillment of such provisions of said contract between the complainant and the purchaser. In pursuance of the agreement between the complainant and the common carrier the goods were then

transported across the state lines of the State of Illinois and into another or other state or country and delivered by the carrier to the purchaser in such states and countries other than Illinois.

Western Cartridge Company, by J. L. Donnelly, Secretary.

Duly sworn to by J. L. Donnelly. Jurat omitted in printing.

(Here follow Exhibits A, B, C, and D, side folios 49, 50, 51, 52, and 52a)

[fol. 53] And forasmuch as the matters and things hereinbefore set forth do not otherwise appear of record, the Complainant tenders this its Certificate of Evidence and prays that the same may signed and sealed by the Judge of this Court pursuant to the Statute in such case made and provided; which is accordingly done this 3rd day of August, A. D. 1928.

Chas. G. Briggle, Judge. (Seal.)

[fol. 54] In Circuit Court of Sangamon County

[Title omitted]

Stipulation re Certificate of Evidence

It is hereby stipulated and agreed between the parties hereto by their respective solicitors that the original certificate of evidence be incorporated in the transcript of record in lieu of a copy thereof.

Fyffe & Clarke, Solicitors for Complainant. Oscar E. Carlstrom, Attorney General, Solicitors for Defendant. B. L. Catron, Assistant Attorney General.

EXHIBIT "A"

(A)

Western Cartridge Company

East Alton, Illinois, U. S. A.

Ammunition Order

Date.....

DISCOUNTS AND QUANTITY ON ORDER

LOADED SHELLS		CARTRIDGES	
Xpert	M.....	22 Shorts (Bail)	M.....
Super-X	M.....	Other Rim Fire	M.....
Field	M.....	Center Fire	M.....
Record	M.....		
New Chief	M.....		
Terms		Terms	

NOTE—

This order is placed at prices and terms stated herein and is subject to acceptance by the Company.

Verbal agreements between buyer and salesman will not be recognized.

In the event of the insolvency of the buyer, or sale, or transfer of the business of the buyer, this agreement may, at the option of the company, be rescinded.

All agreements are contingent upon strikes, floods, fires, accidents or other conditions beyond the control of the Company.

Ship To.....

.....

When..... Route.....

Quantity	Gauge	Shells	Drams Powder	Kind of Powder	Ounces Shot	Size of Shot		List per M	
						Drop	Chilled		

When..... Route.....

Quantity	Gauge	Shells	Drams Powder	Kind of Powder	Ounces Shot	Size of Shot		List per M	
						Drop	Chilled		
								$	
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Representative..... Buyer.....

EXHIBIT "B"

WESTERN CARTRIDGE COMPANY

EAST ALTON, ILLINOIS

No._____ **Date**_____

Ship to_____

Town_____ **State**_____ **When**_____

Route_____ **Terms:**_____

NOTE:—This order is placed at prices and terms stated herein and is subject to acceptance by the Company. Verbal agreements between buyer and salesman will not be recognized. In the event of the insolvency of the buyer, or sale, or transfer of the business of the buyer, this agreement may, at the option of the company, be rescinded. All agreements are contingent upon strikes, floods, fires, accidents or other conditions beyond the control of the company.

QUANTITY	GAUGE	SHELL, POWDER AND SPECIFICATION	PRICE	
M				
M				
M				
M				
M				
M				
M				
M				
M				
M				
M				
M				
M				

For Shipment Through_____ **Jobber**

SALESMAN BUYER

PRICES AND TERMS ACCEPTED

(D)

EXHIBIT "C"

AMERICAN RAILWAY EXPRESS CO.

ORIGINAL—NOT NEGOTIABLE

AT EAST ALTON, ILL., _____ 192__

From **Western Cartridge Co.**

The following described articles to be forwarded to consignee and destination as given below, subject to the terms and conditions of the Uniform Express Receipt prescribed by the Interstate Commerce Commission, and in effect on the date of shipment.

06639

CONSIGNED TO _____

STREET ADDRESS _____

DESTINATION _____ STATE _____ COUNTY _____

No. Packages	DESCRIPTION OF ARTICLES, SPECIAL MARKS AND EXCEPTIONS	*WEIGHT (Sub. to Cor.)
	Cases Small Arms Ammunition (Loaded Paper Shells)	
	" " " " (Metallic Loaded Cartridges)	
	" " " Primers	
	" Shot	
	Barrels Clay Targets	
	Cases Target Traps	
	" Trap Repairs	
	" Sheet Brass, Not Perforated	
	" " Bronze " "	
	" " Nickel Silver, Not Perforated	
	" Brass Ferrules	
	" " Blanks, Unfinished Shapes, N. O. I. B. N.	
	" " Articles, N. O. I. B. N.	
	" Screw Shells (For Lamp Sockets)	
	" Lawn Sprinklers	
	Packages Advertising Matter (Described)	
	Cases	

PREPAID	COLLECT	C. O. D.	CHARGES	
		$ _____	Amt. $ _____	Value herein declared by shipper to be _____

WESTERN CARTRIDGE CO., Shipper

Per _____ 1 _____ For the Express Co.

290964 BUSINESS UNARCO SYSTEMS, CHICAGO

(Uniform Domestic Straight Bill of Lading adopted by Carriers in Official, Southern and Western Classification territories, March 12, 1922.)
(Prescribed by the Interstate Commerce Commission.)

UNIFORM STRAIGHT BILL OF LADING—ORIGINAL—NOT NEGOTIABLE

RECEIVED, subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading.

At East Alton, Ill., _____ 192__ FROM **WESTERN CARTRIDGE CO.**

_____ Company Agent's No. _____ Shipper's No. 08978

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

(Mail or street address of consignee—For purposes of notification only.)

Consigned to _____

Destination _____ State of _____ County of _____

Route _____ Car Initial _____ Car No. _____

No. Packages	DESCRIPTION OF ARTICLES, SPECIAL MARKS AND EXCEPTIONS	*Weight (Subj. to Corr.)	Class or Rate	Ck. Col.
	Cases Small Arms Ammunition (Loaded Paper Shells)			
	" " " " (Metallic Loaded Cartridges)			
	" " " Primers			
	" Shot			
	Gunnies (Bags) Shot			
	Barrels Clay Targets			
	Cases Target Traps			
	" Sheet Brass, Not Perforated .005" and thicker			
	" Sheet Bronze, Not Perforated .005" and thicker			
	" Sheet Nickel, (German) Silver Not Perforated .005" and thicker			
	" Sheet Brass, Perforated .005" and thicker			
	" Brass Ferrules			
	" Brass Blanks (Unfinished Shapes)			
	" Screw Shells (for Lamp Sockets)			
	" Lawn Sprinklers			
	" Brass Articles (N. O. S.)			
	Cases			
	Barrels			

If this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges. (See section 7 of conditions.)

WESTERN CARTRIDGE CO.

Per _____

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Received $ _____ to apply in prepayment of the charges on the property described herein.

Agent or Cashier.

Per _____

(The signature here acknowledges only the amount prepaid.)

Charges Advanced: $ _____

1

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."
NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding _____ per _____

This is to certify that the above articles are properly described by name and are packed and marked and are in proper condition for transportation according to the regulations prescribed by the Interstate Commerce Commission.

Shipper's imprint in lieu of stamp; not a part of Bill of Lading approved by the Interstate Commerce Commission.

WESTERN CARTRIDGE CO., Shipper, Per _____ Agent _____ Per _____

Permanent Post-Office Address of Shipper: EAST ALTON, ILL.

274349 [illegible]

CONTRACT TERMS AND CONDITIONS

Sec. 1. (a) The carrier or party in possession of any of the property herein described shall be liable as at common law for any loss thereof or damage thereto except as hereinafter provided.

(b) No carrier or party in possession of all or any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, the authority of law, or the act or default of the shipper or owner, or for natural shrinkage. The carrier's liability shall be that of warehouseman, only, for loss, damage, or delay caused by fire occurring after the expiration of the free time allowed by tariffs lawfully on file (such free time to be computed as therein provided) after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination, or tender of delivery of the property to the party entitled to receive it, has been made. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon the request of the shipper, owner, or party, entitled to make such request, or resulting from a defect or vice in the property, or for country damage to cotton, or from riots or strikes.

(c) In case of quarantine the property may be discharged at risk and expense of owners into quarantine depot or elsewhere, as required by quarantine regulations or authorities, or for the carrier's dispatch at nearest available point in carrier's judgment, and in any such case carrier's responsibility shall cease when property is so discharged, or property may be returned by carrier at owner's expense to shipping point, earning freight both ways. Quarantine expenses of whatever nature or kind upon or in respect to property shall be borne by the owners of the property or be a lien thereon. The carrier shall not be liable for loss of damage occasioned by fumigation or disinfection or other acts required or done by quarantine regulations or authorities even though the same may have been done by carrier's officers, agents, or employees, nor for detention, loss, or damage of any kind occasioned by quarantine or the enforcement thereof. No carrier shall be liable, except in case of negligence, for any mistake or inaccuracy in any information furnished by the carrier, its agents, or officers, as to quarantine laws or regulations. The shipper shall hold the carriers harmless from any expense they may incur, or damages they may be required to pay, by reason of the introduction of the property covered by this contract into any place against the quarantine laws or regulations in effect at such place.

Sec. 2. (a) No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch. Every carrier shall have the right in case of physical necessity to forward said property by any carrier or route between the point of shipment and the point of destination. In all cases not prohibited by law, where a lower value than actual value has been represented in writing by the shipper or has been agreed upon in writing as the released value of the property as determined by the classification or tariffs upon which the rate is based, such lower value plus freight charges if paid shall be the maximum amount to be recovered, whether or not such loss or damage occurs from negligence.

(b) Claims for loss, damage, or injury to property must be made in writing to the originating or delivering carrier or carriers issuing this bill of lading within six months after delivery of the property (or, in case of export traffic, within nine months after delivery at port of export) or, in case of failure to make delivery, then within six months (or nine months in case of export traffic) after a reasonable time for delivery has elapsed; provided that if such loss, damage, or injury was due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, then no notice of claim nor filing of claim shall be required as a condition precedent to recovery. Suits for loss, damage, injury, or delay shall be instituted only within two years and one day after delivery of the property, or in case of failure to make delivery, then within two years and one day after a reasonable time for delivery has elapsed: Provided, That in case the claim on which suit is based was made in writing within six months, or nine months in case of export traffic (whether or not filing of such claim is required as a condition precedent to recovery), suit shall be instituted not later than two years and one day after notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice.

(c) Any carrier or party liable on account of loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance: Provided, That the carrier reimburse the claimant for the premium paid thereon.

Sec. 3. Except where such service is required as the result of carrier's negligence, all property shall be subject to necessary cooperage and baling at owner's cost. Each carrier over whose route cotton or cotton linters is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public or licensed elevator, may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered and placed with other grain of the same kind and grade without respect to ownership (and prompt notice thereof shall be given to the consignor), and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

Sec. 4. (a) Property not removed by the party entitled to receive it within the free time allowed by tariffs, lawfully on file (such free time to be computed as therein provided), after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination has been made, may be kept in vessel, car, depot, warehouse or place of delivery of the carrier, subject to the tariff charge for storage and to carrier's responsibility as warehouseman, only, or at the option of the carrier, may be removed to and stored in a public or licensed warehouse at the place of delivery or other available place, at the cost of the owner, and there held without liability on the part of the carrier and subject to lien for all freight and other lawful charges, including a reasonable charge for storage.

(b) Where nonperishable property which has been transported to destination hereunder is refused by consignee or the party entitled to receive it, or said consignee or party entitled to receive it fails to receive it within 15 days after notice of arrival shall have been duly sent or given, the carrier may sell the same at public auction to the highest bidder, at such place as may be designated by the carrier: Provided, That the carrier shall have first mailed, sent, or given to the consignor notice that the property has been refused or remains unclaimed, as the case may be, and that it will be subject to sale under the terms of the bill of lading if disposition be not arranged for, and shall have published notice containing a description of the property, the name of the party to whom consigned, or, if shipped order notify, the name of the party to be notified, and the time and place of sale, once a week for two successive weeks, in a newspaper of general circulation at the place of sale or nearest place where such newspaper is published: Provided, That 30 days shall have elapsed before publication of notice of sale after said notice that the property was refused or remains unclaimed was mailed, sent, or given.

(c) Where perishable property which has been transported hereunder to destination is refused by consignee or party entitled to receive it, or said consignee or party entitled to receive it shall fail to receive it promptly, the carrier may, in its discretion, to prevent deterioration or further deterioration, sell the same to the best advantage at private or public sale: Provided, That if time serves for notification to the consignor or owner of the refusal of the property or the failure to receive it and request for disposition of the property, such notification shall be given, in such manner as the exercise of due diligence requires, before the property is sold.

(d) Where the procedure provided for in the two paragraphs last preceding is not possible, it is agreed that nothing contained in said paragraphs shall be construed to abridge the right of the carrier at its option to sell the property under such circumstances and in such manner as may be authorized by law.

(e) The proceeds of any sale made under this section shall be applied by the carrier to the payment of freight, demurrage, storage, and any other lawful charges and the expense of notice, advertisement, sale, and other necessary expenses and of caring for and maintaining the property, if proper care of the same requires special expense, and should there be a balance it shall be paid to the owner of the property sold hereunder.

(f) Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed freight agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and, except in case of carrier's negligence, when received from or delivered to such stations, wharves, or landings shall be at owner's risk until the cars are attached to and after they are detached from locomotive or train or until loaded into and after unloaded from vessels.

Sec. 5. No carrier hereunder will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classifications or tariffs unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

Sec. 6. Every party, whether principal or agent, shipping explosives or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for and indemnify the carrier against all loss or damage caused by such goods, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

Sec. 7. The owner or consignee shall pay the freight and average, if any, and all other lawful charges accruing on said property; but, except in those instances where it may lawfully be authorized to do so, no carrier by railroad shall deliver or relinquish possession at destination of the property covered by this bill of lading until all tariff rates and charges thereon have been paid. The consignor shall be liable for the freight and all other lawful charges, except that if the consignor stipulates, by signature, in the space provided for that purpose on the face of this bill of lading that the carrier shall not make delivery without requiring payment of such charges and the carrier, contrary to such stipulation, shall make delivery without requiring such payment, the consignor shall not be liable for such charges. Nothing herein shall limit the right of the carrier to require at time of shipment the prepayment or guarantee of the charges. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

Sec. 8. If this bill of lading is issued on the order of the shipper, or his agent, in exchange or in substitution for another bill of lading, the shipper's signature to the prior bill of lading as to the statement of value or other wise, or election of common law or bill of lading liability, in or in connection with such prior bill of lading, shall be considered a part of this bill of lading as fully as if the same were written or made in or in connection with this bill of lading.

Sec. 9. (a) If all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to all the terms and provisions of, and all the exemptions from liability contained in, the Act of the Congress of the United States, approved on February 13, 1893, and entitled "An act relating to the navigation of vessels, etc.," and of other statutes of the United States according carriers by water the protection of limited liability, and to the conditions contained in this bill of lading not inconsistent therewith or with this section.

(b) No such carrier by water shall be liable for any loss or damage resulting from any fire happening to or on board the vessel, or from explosion, bursting of boilers or breakage of shafts, unless caused by the design or neglect of such carrier.

(c) If the owner shall have exercised due diligence in making the vessel in all respects seaworthy and properly manned, equipped, and supplied, no such carrier shall be liable for any loss or damage resulting from the perils of the lakes, seas, or other waters, or from latent defects in hull, machinery, or appurtenances whether existing prior to, at the time of, or after sailing, or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And, when for any reason it is necessary, any vessel carrying any or all of the property herein described shall be at liberty to call at any port or ports, in or out of the customary route, to tow and be towed, to transfer, trans-ship, or lighter, to load and discharge goods at any time, to assist vessels in distress, to deviate for the purpose of saving life or property, and for docking and repairs. Except in case of negligence such carrier shall not be responsible for any loss or damage to property if it be necessary or is usual to carry the same upon deck.

(d) General average shall be payable according to York-Antwerp Rules, 1890, and, as to any matter not therein provided for, according to the law and usage of the port of New York. If the owners shall have exercised due diligence to make the vessel in all respects seaworthy and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster resulting from faults or errors in navigation, or in the management of the vessel, or from any latent or other defects in the vessel, her machinery or appurtenances, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage (provided the latent or other defects or the unseaworthiness was not discoverable by the exercise of due diligence by the shippers, consignees and / or owners of the cargo shall nevertheless pay salvage and any special charges incurred in respect of the cargo, and shall contribute with the shipowner in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred for the common benefit or to relieve the adventure from any common peril.

(e) If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the tariff provisions, which shall be regarded as incorporated into the conditions of this bill of lading.

(f) The term "water carriage" in this section shall not be construed as including lighterage in or across rivers, harbors, or lakes, when performed by or on behalf of rail carriers.

Sec. 10. Any alteration, addition, or erasure in this bill of lading which shall be made without the special notation hereon of the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

[fol. 55] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 56] IN SUPREME COURT OF ILLINOIS

WESTERN CARTRIDGE COMPANY, a Corporation, Appellant,

vs.

LOUIS L. EMMERSON, as Secretary of State of the State of Illinois, Defendant

Appeal from Circuit Court of Sangamon County

ASSIGNMENT OF ERRORS

And now comes the appellant, Western Cartridge Company, a corporation, by its solicitors and submits the following assignment of errors on which it relies on the prosecution of its appeal.

1. The Circuit Court erred in finding that the equities of the cause were with the defendant.

2. The Circuit Court erred in finding that the bill of complaint should be dismissed for want of equity.

3. The Circuit Court erred in finding that the temporary injunction heretofore entered by it should be dissolved.

4. The Circuit Court erred in refusing to hold that the annual license fee for the privilege of doing business in Illinois for the year commencing July 1, 1927, assessed against the complainant by the defendant was illegal, invalid and without authority of law.

5. The Circuit Court erred in refusing to hold that the sum of $1,328.81 of the complainant's annual license fee for the privilege of doing business in Illinois was assessed by [fol. 57] the defendant illegally and without authority of law.

6. The Circuit Court erred in refusing to hold that the license fee for the privilege of doing business in Illinois for the year commencing July 1, 1927, assessed against the

complainant by the defendant constituted a burden on interstate commerce in violation of the Commerce Clause of the Federal Constitution and was consequently invalid.

7. The Circuit Court erred in refusing to hold that Section 105 of the General Corporation Act of Illinois does not authorize the inclusion of interstate business from places in Illinois to points in other States as business transacted in Illinois in determining the basis for computing the license fee imposed on foreign corporations for the privilege of doing business in Illinois.

8. The Circuit Court erred in failing to hold that the inclusion by the defendant of interstate business from places in Illinois to points without the State as business transacted in Illinois in determining the basis for computing the annual license fee of the complainant for the privilege of doing business in Illinois was contrary to the provisions of Section 105 of the General Corporation Act and therefore illegal, invalid and without authority of law.

9. The Circuit Court erred in failing to hold that Section 105 of the General Corporation Act of Illinois is invalid, unconstitutional and void in that it violates the Commerce Clause of the Federal Constitution by authorizing the in-
[fol. 58] clusion of interstate business as business transacted in Illinois, in determining the basis for computing the annual license fee imposed on foreign corporations for the privilege of doing business in Illinois.

10. The Circuit Court erred in failing to hold that Section 105 of the General Corporation Act of Illinois is invalid, unconstitutional and void for the reason that it deprives corporations of their property without due process of law, contrary to the provisions of the Constitution of the State of Illinois and of the Fourteenth Amendment to the Constitution of the United States.

11. The Circuit Court erred in failing to hold that Section 105 of the General Corporation Act as amended by the Act of May 12, 1927, is invalid and ineffectual in that the said amendatory Act purporting to amend said Section 105 was of no effect in amending an invalid section of the Statute.

12. The Circuit Court erred in failing to find that the franchise tax paid by the complainant to the defendant was illegally collected and should have been returned to the complainant.

13. The Circuit Court erred in failing to hold that that part of the franchise tax or license fee paid by the complainant to the Secretary of State, which was solely based upon and attributable to transactions in interstate commerce, was illegally collected and should have been returned by the defendant to the complainant.

14. The Circuit Court erred in refusing to grant a permanent injunction restraining the defendant from turning over to the said Treasurer the franchise tax collected by him from the complainant and restraining him from enforcing the penalties provided for by the General Corporation Act against the complainant.

[fol. 59] 15. The Circuit Court erred in refusing to grant a permanent injunction restraining the defendant from turning over to the State Treasurer the sum of $1,328.81 of the license fee paid by the complainant and restraining him from enforcing any penalties against the complainant.

16. The Circuit Court erred in dismissing the bill of complaint for want of equity.

17. The Circuit Court erred in dissolving the temporary injunction heretofore ordered by it.

Respectfully submitted.

Fyffe & Clarke, Solicitors for Appellant.

[fol. 60] Minute entry of submission October 17, 1928, omitted in printing.

[fol. 61] IN SUPREME COURT OF ILLINOIS

No. 19171

WESTERN CARTRIDGE COMPANY, a Corporation, Appellant,

vs.

LOUIS L. EMMERSON, as Secretary of State of the State of Illinois, Appellee

Appeal from Circuit Court Sangamon

OPINION—Filed April 20, 1929

[fol. 62] Mr. Chief Justice DEYOUNG delivered the opinion of court:

The Western Cartridge Company, a corporation organized under the laws of Delaware and licensed to do business in this State, filed its bill of complaint in the circuit court of Sangamon county against Louis L. Emmerson, Secretary of State, to enjoin him from paying to the State Treasurer the sum of money which he collected from the complainant as its annual franchise tax for the year beginning July 1, 1927, or, in any event, to enjoin such payment of the portion of the tax attributable to what the complainant denominated as its interstate business. A temporary injunction against the deposit of the money with the State Treasurer was granted. A hearing upon the bill, the answer of the defendant and an agreed statement of facts resulted in the rendition of a decree dismissing the bill for want of equity. The complainant prosecutes this appeal from that decree. The court ordered that the temporary injunction should continue in force during the pendency of the appeal.

Appellant is engaged in the manufacture and sale, among other things, of small-arms ammunition. Its principal office and factory are located at East Alton, Illinois. It has a branch office and factory at Springfield, in this State. Appellant receives at its principal office, upon forms provided by it, orders for its manufactured products from persons and corporations in Illinois and elsewhere. Written acceptances of these orders are sent to the buyers. The order forms provide for the delivery of the goods to the means of conveyance at one or the other of appellant's factories in this State free of charge and thence their ship-

ment to the buyers' respective places of business. The goods sold are packed, marked with the buyers' names and addresses and delivered to common carriers at appellant's factories. The contracts with the carriers are evidenced by bills of lading or shipping receipts, and in the performance of these contracts the carriers transport the goods to their respective destinations, not only in Illinois but also in other States and in foreign countries.

The license fee or franchise tax of which appellant complains was collected pursuant to section 105 of the [fol. 63] general Corporation act as amended by the act approved May 12, 1927, (Laws of 1927, p. 358; Cahill's Stat. 1927, p. 656; Smith's Stat. 1927, pp. 716, 717;) which reads: "Each corporation for profit, including railroads, except insurance companies, heretofore or hereafter organized under the laws of this State or admitted to do business in this State, and required by this act to make an annual report, shall pay an annual license fee or franchise tax to the Secretary of State of five cents on each one hundred dollars of the proportion of its issued capital stock, or amount to be issued at once, represented by business transacted and property located in this State, but in no event shall the amount of such license fee or franchise tax be less than that required by this act of corporations having no property or business in this State. In the event that the corporation has stock of no par value, its shares, for the purpose of fixing such fee, shall be taken and considered at the amount of the consideration received or to be received by such corporation for such shares." In compliance with this section appellant filed its annual report in the office of the Secretary of State. It set forth in the report that its capital stock had a par value of $5,701,800; that it possessed property valued at $6,924,804.92, of which $6,894,903.27 was situated in Illinois; that its business for the year 1926 aggregated $11,670,925.51, of which $1,919,-882.73 represented goods sold and delivered in this State, and that the balance, or $9,751,042.78, reported as interstate commerce, constituted the total of shipments made to customers outside of the State. In computing appellant's franchise tax the Secretary of State considered all the business done by appellant, according to its report, as having been transacted in Illinois, and based the tax on the pro-

portion of its issued capital stock represented by the business so transacted and its property located in this State. The inclusion in the computation of the shipments made by appellant to customers outside of Illinois increased the franchise tax to the extent of $1,328.21. The whole tax, including this sum, amounted to $2,808.03, and it was paid by appellant. The payment was made under protest, not only with respect to the whole tax but also the portion specifically mentioned.

Appellant's contention for a reversal of the decree is that the inclusion of the business which is reported as interstate in the computation of the license fee or franchise tax for the privilege of doing business in this State is in- [fol. 64] consistent with the provisions of section 105 of the general Corporation act and that it is a direct and illegal burden on interstate commerce.

Section 105 of the general Corporation act, to the extent that it prescribes the method of determining the license fee or franchise tax which a foreign corporation doing business in this State shall pay, is similar to section 5b of the Foreign Corporation act, which became effective on July 1, 1917, (Laws of 1917, p. 306,) and which provided: "It shall be the duty of the Secretary of State to propound interrogatories from time to time to officers of such foreign corporations doing business in this State to ascertain the proportion of capital stock actually being represented by property located and business transacted in the State of Illinois, which proportion shall be determined by averaging the percentage of the total business of the corporation transacted in Illinois with the percentage of the total tangible property located in this State." This section was construed and applied in American Can Co. v. Emmerson, 288 Ill. 289. It was there held that while the State may not regulate or impose burdens upon interstate commerce, yet where the circumstances are such as to indicate no purpose or necessary effect to burden such commerce, it may require a license fee based upon the proportion of a foreign corporation's capital stock represented by its property located and business transacted in the State, and that section 5b did not discriminate against foreign corporations and in favor of domestic corporations of like character.

Subsequently, in Hump Hairpin Manf. Co. v. Emmerson, 293 Ill. 387, it appeared that the company, a foreign

corporation, had its factory, manufactured its products and accepted orders for them and completed its contracts of sale in this State. Following the decision in American Can Co. v. Emmerson, supra, this court held that the whole of the corporation's capital stock was represented by the property located and the business transacted in Illinois although approximately nine-tenths of its manufactured products were shipped to customers in other States, and that a license fee under section 5b of the Foreign Corporation act, based on the entire capital stock of the corporation, was not a tax on interstate commerce. To review that decision the corporation prosecuted a writ of error from the Supreme Court of the United States in Hump Hairpin Manf. Co. v. Emmerson, 258 U. S. 290. The plaintiff in error contended there, as appellant does here, that, notwith-[fol. 65] standing the manner in which the company conducted its business, that portion which was done with residents of States other than Illinois constituted interstate commerce, and that to include it in the company's business transacted in this State for the purpose of ascertaining the latter's percentage of the whole rendered the act under which the computation was made unconstitutional because the tax so assessed was a burden upon interstate commerce. In denying the contention and affirming the judgment of this court the Supreme Court of the United States said that while a State might not use its taxing power to regulate or burden interstate commerce, it was settled that a State excise tax which affected such commerce, not directly but only incidentally and remotely, might be valid where it was clear that it was not imposed with the covert purpose or with the effect of defeating Federal constitutional rights; that taxes had been repeatedly sustained where the proceeds of interstate commerce were considered in the process of determining the amount of a fund, not wholly derived from such commerce, to be subjected to assessment; that the act in question was not a disguised attempt to tax interstate commerce but that its purpose plainly was to differentiate State from interstate business and to impose the tax only on the former; that, construed with other statutes, the act accorded equal treatment to foreign and domestic corporations and that property beyond the jurisdiction of the State was not taxed; that to require foreign corporations to pay for the privilege of doing business in a State was a familiar

and often-approved form of taxation; that the tax assessed did not impose any direct or substantial burden upon interstate commerce, and that the assessment, so far as such commerce was concerned, was incidental, remote and unimportant, and therefore constitutional.

The decision of the Supreme Court of the United States in Hump Hairpin Manf. Co. v. Emmerson, supra, is decisive of this case. Appellant's factories and offices were located, its manufacturing operations were conducted, orders for its goods were accepted and shipments of its products originated in this State exclusively. Assuming that the business done by appellant with residents of States other than Illinois was interstate business, yet the license fee or franchise tax was not directly imposed or computed upon the proceeds of interstate commerce. By the provisions of section 105 of the general Corporation act other factors necessarily enter into the calculation. All of ap- [fol. 66] pellant's business was transacted in this State, and it was properly included in the process of determining the proportion of its issued capital stock, represented by business transacted and property located in Illinois, upon which the franchise tax might be computed. Such a tax does not constitute a direct or substantial burden upon interstate commerce.

The decree of the circuit court is affirmed.

Decree affirmed.

[fol. 67] IN SUPREME COURT OF ILLINOIS

No. 19171

WESTERN CARTRIDGE COMPANY, a Corporation, Appellant,

vs.

LOUIS L. EMMERSON, as Secretary of State of the State of Illinois, Appellee

Appeal from Circuit Court Sangamon County

DECREE—April 20, 1929

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and in-

spected as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the decree aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error;

Therefore it is considered by the Court that the decree of the Circuit Court aforesaid be affirmed in all things and stand in full force and effect, notwithstanding the said matter and things therein assigned for error. And it is further considered by the Court that the said Appellee recover of and from the said Appellant costs by him in this behalf expended, to be taxed, and that he have execution therefor.

I, Charles W. Vail, Clerk of the Supreme Court of the State of Illinois and keeper of records, files and seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In testimony whereof I have set my hand and affixed the seal of the said Supreme Court, at Springfield, in said State, this 27th day of August, in the year of our Lord one thousand nine hundred and twenty-nine.

Charles W. Vail, Clerk of the Supreme Court.

(Seal of the Supreme Court, State of Illinois.)

[fol. 68] IN SUPREME COURT OF ILLINOIS

[Title omitted]

ORDER DENYING REHEARING—June 6, 1929

Now on this day the Court having duly considered petition for rehearing filed herein and the Court being now advised in the premises doth overrule the prayer of the petition and denies a rehearing of this cause.

[fol. 69] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 70] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 21, 1929

The petition herein for a writ of certiorari to the Supreme Court of the State of Illinois is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 34,506. Illinois Supreme Court. Term No. 375. Western Cartridge Company, petitioner, vs. Louis L. Emmerson, Secretary of State of the State of Illinois. Petition for writ of certiorari and exhibit thereto. Filed September 5, 1929. File No. 34,506.